

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Application for Waiver

Docket No. RM2021-5

**AMERICAN BANKERS ASSOCIATION OPPOSITION
TO THE APPLICATION FOR WAIVER**

(April 6, 2021)

The American Bankers Association (ABA),¹ on behalf of its member banks, submits these comments in opposition to the Postal Service's application for waiver under 39 C.F.R. § 3030.286.²

The Request is a Misapplication of the Waiver Process

The final rules implementing the waiver provisions, see 39 CFR § 3030.286, reflect the consensus view that waivers should be hard to obtain and infrequent. The Commission stated in Order No. 5763 that the waiver process should be used only in "exceptional circumstances" and that only those requests that demonstrate "strict adherence" to the requirements 39 C.F.R. § 3030.286 would be granted.³ These views are consistent with the fact that the waiver provisions were adopted to provide the Postal Service with flexibility to address unforeseen circumstances where application of the Commission's general "do no harm" principle of moving workshare discounts ever

¹ The American Bankers Association is the united voice of America's small, regional and large banks that together employ more than 2 million women and men, hold nearly \$17 trillion in assets, safeguard \$12.8 trillion in deposits and extend more than \$9 trillion in loans. Through a broad array of information, training, staff expertise and other resources, ABA supports America's banks as they perform their critical role as drivers of America's economic growth and job creation.

² See United States Postal Service Application for Waiver Under 39 CFR 3030.286 (Mar. 26, 2021)(Waiver Application).

³ Docket No. RM2017-3, Order Adopting Final Rules for the System of Regulating Rates and Classes for Market Dominant Products, Order No. 5763 (Nov. 29, 2020) at 213-214.

closer to full efficient component pricing (ECP) rates could occasionally frustrate the overarching statutory goal of maximizing pricing and operational efficiency.⁴

Nevertheless, numerous parties warned that an overly permissive approach to waivers would undermine the statutory efficiency goals and the Commission's newly adopted workshare regulations.⁵ Unfortunately, those concerns were prescient.

The Postal Service's request to waive the requirement that it improve the First-Class Mail 5-Digit Automation (5-Digit) discount in the next price adjustment appears designed to push the boundaries of minimal pleading. The Postal Service's waiver request fails to meet even the most basic requirements of the waiver regulations and provides no analysis to support the request.

As the first waiver request under the new rules, this application will serve as a test case. If the Commission grants a waiver based on this record, the goal of improving workshare discounts to achieve the statutory pricing and operational efficiency goals will be lost.

The Waiver Request Does Not Meet the Requirements of 39 CFR 3030.286

Section 3030.286(c)(5)(i) states that the waiver request "shall provide . . . a description of the operational strategy at issue." The Postal Service request fails to identify or describe the operational strategy at issue. Section 3030.286(c)(5)(ii) states that the waiver request "shall provide . . . [q]uantitative analysis or, if not available, qualitative analysis indicating how the workshare discount at issue is related to the operational strategy." The Postal Service request fails to provide any quantitative or qualitative analysis as required by the Commission's rules to justify the waiver. Section

⁴ See 39 U.S.C. § 3622(b)(1) (Objective 1).

⁵ See Order No. 5763 at 207 and 213 (citing comments of ABA, NPPC, and Pitney Bowes).

3030.286(c)(5)(iii) states that the waiver request shall provide an explanation addressing “[h]ow setting the workshare discount in compliance with . . . § 3030.284(c), . . . would impede that operational strategy.”⁶ The Postal Service request fails to provide any explanation addressing how improving the 5-Digit discount would impede the efficient operation of the Postal Service.

Section 3030.286(g) states, in relevant part, that an “application for waiver shall be granted only if setting the workshare discount closer or equal to the cost avoided by the Postal Service for not providing the applicable service would impede the efficient operation of the Postal Service[.]” Again, the Postal Service request fails to provide any explanation addressing how improving the 5-Digit discount would impede the efficient operation of the Postal Service.

The oblique reference to unsupported concerns that improvements in the 5-Digit discount “could decrease the efficiency of its processing operations” and “could lead to unpredictable changes among the relative proportions of mail volumes sorted to 5-Digit, Auto AADC, and Mixed AADC,”⁷ is not enough. These speculative comments cannot satisfy the preponderance of the evidence standard.

For all these reasons, the Commission must deny the waiver request for failure to meet the requirements of Section 3030.286.

The Alternative Justifications Offered by the Postal Service Should Be Rejected, Because Approving Them Would Undermine the PRC’s Final Rules

The primary justification offered in support of the waiver request is that delayed improvement of the 5-Digit discount will permit the Postal Service to “monitor[] the effect

⁶ 39 CFR § 3030.286(c)(5).

⁷ Waiver Application at 2 (emphasis added).

on overall mail volumes of the first above-inflation price increase[.]”⁸ This statement confirms there is no operational strategy at issue, just a request to delay aspects of the final rules that the Postal Service opposed, while it proceeds to implement those aspects of the rule that it supports. The Commission should reject this approach as inconsistent with the holistic approach adopted in the final rules, which pairs above-inflation pricing authority with a commitment to improve workshare discounts, thus partially offsetting larger price increases.

The Postal Service’s stated concerns regarding rate stability seem misplaced. First, the celebrated rate stability of the 5-Digit discount is, in fact, the strongest argument for the waiver request to be denied. The stability of the 5-Digit discount reflects longstanding, chronic inefficiency in the most important First-Class Mail Presort rate. Second, if the Postal Service is genuinely concerned about the potential effects of above-inflation price increases, it need not use all of the rate authority granted by the Commission. Under the Commission’s rules, it can make judicious use of its new pricing authority and bank any unused rate authority.

Conclusion

The Postal Service’s request fails to meet the requirements of Section 3030.286. The Commission should deny the Postal Service’s request and use this case to reaffirm that the waiver requests should be limited to exceptional circumstances, and that waiver requests will be narrowly construed and subject to strict adherence to the requirements of Section 3030.286.

⁸ Waiver Application at 1.

Respectfully submitted,

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